

**STATE OF MICHIGAN**  
**JUDICIAL DISTRICT**  
**JUDICIAL CIRCUIT**  
**COUNTY PROBATE**

3rd

**SUMMONS AND COMPLAIN**

08-122051 CZ 8/28/2008  
JDG:ROBERT L ZIOLKOWSKI  
KILPATRICK KWAME M HON  
VS  
GRANHOLM JENNIFER M HON

**Court Address**

Two Woodward Avenue, Detroit, MI 48226

**Court telephone no.**  
313-224-5510

**Plaintiff name(s), address(es) and telephone no(s).**

HON. KWAME M. KILPATRICK,  
Two Woodward Avenue  
Detroit, MI 48226

**V**

**Defendant name(s), address(es), and telephone no(s).**

HON. JENNIFER M. GRANHOLM,  
in her capacity as Governor of the  
State of Michigan  
111 S. Capitol Avenue  
Lansing, MI 48909

**Plaintiff attorney, bar no., address, and telephone no.**

James C. Thomas P23801  
535 Griswold Street, Suite 2632  
Detroit, MI 48226  
313-963-2420

**SUMMONS**

**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan, you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires*	Court clerk
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\*This summons is invalid unless served on or before its expiration date.

**COMPLAINT**

**Instruction:** The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

**Family Division Cases**

- ☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- ☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**General Civil Cases**

- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☒ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in Wayne County Circuit Court.

The action ☒ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
08-115445 CZ	Robert L. Ziolkowski	P22745

**VENUE**

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Wayne County	Ingham County
Place where action arose or business conducted	
Wayne County	

Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

**MC 01 (6/04) SUMMONS AND COMPLAINT**

MCR 2.102(B)(11), MCR 2.104, MCR 2.105, MCR 2.107, MCR 2.113(C)(2)(a),(b), MCR 3.206(A)

**PROOF OF SERVICE****SUMMONS AND COMPLAINT**

Case No. \_\_\_\_\_

**TO PROCESS SERVER:** You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE**☐ **OFFICER CERTIFICATE****OR**☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served personally a copy of the summons and complaint,

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with \_\_\_\_\_

List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

Service fee	Miles Traveled	Mileage fee	Total fee
\$		\$	\$

Signature \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Signature: \_\_\_\_\_  
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with: \_\_\_\_\_  
Attachments

\_\_\_\_\_ on

Day, date, time

on behalf of \_\_\_\_\_

Signature

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

HON. KWAME M. KILPATRICK,

Plaintiff,

v.

HON. JENNIFER M. GRANHOLM,  
in her official capacity as Governor of the State of Michigan,

Defendant.

08-122051 CZ 8/28/2008  
JDG:ROBERT L ZIOLKOWSKI  
KILPATRICK KWAME M HON  
VS  
GRANHOLM JENNIFER M HON

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in the Wayne County Circuit Court, where it was given Docket Number 08-115445-CZ and assigned to Judge Robert L. Ziolkowski. Upon information and belief, this matter remains open, pending the appeal by City Council.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiff Hon. Kwame M. Kilpatrick ("Kilpatrick"), by and through his counsel, hereby complains of Defendant Hon. Jennifer M. Granholm ("Defendant" or "Governor") as follows:

**NATURE OF THE ACTION**

1. This Complaint seeks declaratory and injunctive relief in relation to Governor's removal hearing scheduled to commence on September 3, 2008 at 9:00 a.m.
2. Article 1, Section 17 of the Michigan Constitution of 1963 guarantees Kilpatrick "fair and just treatment" in this hearing. In Count I, Kilpatrick seeks a declaration that by proceeding with the removal hearing as proposed by the Governor, she will violate Kilpatrick's right to fair and just treatment, including the right to an impartial and unbiased finder of fact.

3. In Count II, Kilpatrick seeks a declaration that MCL 168.327 is void for vagueness, and proceedings pursuant thereto violate his right to fair and just treatment.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action under MCL 600.601, MCL 600.605, and MCR 2,605. Venue is proper in this Court pursuant to MCL 600.1621(a) because Governor conducts business in the County of Wayne. Venue is also properly laid in this Court under MCL 600.1621(b) because Kilpatrick resides in County of Wayne.

### **PARTIES**

5. Plaintiff Kilpatrick is the Mayor of the City of Detroit. Kilpatrick is a Michigan resident residing in the City of Detroit, in the County of Wayne, in the State of Michigan.

6. Defendant Hon. Jennifer M. Granholm is the Governor of the State of Michigan vested with executive power pursuant to Article V, Section 1 of the Michigan Constitution and is sued in her official capacity. Defendant resides in Lansing, Michigan.

### **FACTUAL ALLEGATIONS**

7. Kilpatrick has served as the Mayor of the City of Detroit since January 1, 2002. He has twice been elected to the office of Mayor by the people of the City of Detroit.

8. In relation to his alleged conduct with respect to two civil lawsuits brought against the City of Detroit and Kilpatrick as the Mayor of the City of Detroit, Kilpatrick was charged with eight felony counts on March 24, 2008, including perjury, misconduct in office and obstruction of justice. Kilpatrick has pled not guilty and is awaiting trial on these charges on a date to be scheduled in the future.

9. On May 20, 2008, pursuant to article 7, Section 33 of the Michigan Constitution of 1963 and Section 327 of the Michigan Election Law, the Detroit City Council submitted a

written petition to Defendant for the removal of Kilpatrick from the office of Mayor of the City of Detroit. In response, Defendant scheduled a hearing in advance of Kilpatrick's trial in the criminal matter, to decide whether Kilpatrick should be removed from office for "official misconduct."

10. On August 25, 2008, Kilpatrick timely filed his reply brief in support of his motion to dismiss the removal petition pending before the Governor. By nine o'clock the next morning, without hearing argument, the Governor denied Kilpatrick's motion to dismiss the petition or stay the removal proceedings.

11. Defendant has scheduled the hearing on the Detroit City Council's removal request to begin on September 3, 2008. Defendant has ordered that the hearing will be limited to the resolution of two questions: (1) whether Kilpatrick, in his official capacity as Mayor of the City of Detroit, authorized settlements in the matters of *Brown v. Detroit Mayor*, Wayne Circuit Court (Docket No. 03-317557-NZ) and *Harris v. Detroit Mayor*, Wayne Circuit Court (Docket No. 03-337670-NZ) in furtherance of his personal and private interests; and (2) whether Kilpatrick, in his official capacity as Mayor, concealed from or failed to disclose to the Detroit City Council information material to its review and approval of the settlements.

12. Under the relevant statute, the level of proof required in support of Kilpatrick's removal is that the Governor is "satisfied" that there is "sufficient evidence" of "official misconduct." This burden of proof is entirely vague and amorphous. In further support of that proposition, the Governor's aids indicated in phone communication on August 28, 2008, that she equates "sufficient evidence" with "satisfactory evidence," and that "satisfactory evidence" is evidence to satisfy an unprejudiced mind as to the truthfulness of the matter alleged. This standard is vague, subjective, and capable of multiple interpretations. In addition, the phrase

“official misconduct” is not defined in the Michigan Constitution nor in the applicable Michigan Election Law.

13. According to article 7, Section 33 of the Michigan Constitution of 1963 and Section 327 of the Michigan Election Law, the Governor is the sole fact finder in the hearing to remove Kilpatrick. There is no provision in Michigan law that would authorize the Defendant to delegate this fact finding authority.

14. Defendant has made prior statements indicating that she has prejudged the matter before her and is predisposed to ruling that Kilpatrick should be removed from office.

15. On May 27, 2008, the Defendant met with attorneys Sharon McPhail, James C. Thomas, and prosecutor Kym Worthy and Worthy’s assistant prosecutors, to discuss the charges pending against Kilpatrick. This meeting was scheduled at the Governor’s behest. This meeting was an attempt to reach a global resolution of the matter. While it was considered to be a confidential meeting, the Governor breached that confidentiality by communicating the content of the discussions to third parties without prior consent of all involved. It was apparent at this meeting that the Governor did not presume Kilpatrick’s innocence. To the contrary, at this meeting, the Governor and her staff had prepared a blackboard scenario in which his presumption of innocence was ignored and significantly undercut. The Governor explained that no matter the evidence, Kilpatrick had to resign because it was making Michigan look bad. When attorney McPhail protested that Kilpatrick had viable defenses to the charges, Defendant responded that it didn’t matter. See Affidavit of Counsel, Ex. D.

16. In addition, Defendant has made statements to the press further indicating her predisposition to the finding that Kilpatrick should be removed from office. Specifically, the Governor has repeatedly indicated that a quick resolution to Kilpatrick’s situation is necessary

for the good of the State of Michigan. At present, the only means to a quick resolution within Defendant's control is a rush to judgment for removal from office pursuant to Section 327. Examples of these statements include:

- a. "[Granholm] says she hopes the situation can be resolved quickly." Ex. 1.
- b. "Granholm says it's important to turn the page and move forward because Detroit has a lot of positive momentum." Ex. 1.
- c. "'This crisis has to be put behind us quickly, the faster the better – whatever that means.'" Ex. 2.
- d. "'We have a ton of joint projects we are working on together and we've got to keep the momentum going. We don't want this scandal to be slowing down that progress.'" Ex. 2.
- e. "'None of this is good, for the city, for the state. Whatever happens has to happen quickly so that we can turn the page and go to work," she said. 'There . . . is no way you can spin any of this to be positive.'" Ex. 3.

17. Additional statements to the press show that she has prejudged the evidence and is predisposed to remove Kilpatrick from office. These statements include the following:

- a. "Governor Granholm says she doesn't know if Detroit Mayor Kwame Kilpatrick can survive a scandal involving sexually explicit text messages between the mayor and his top aide." Ex. 1.
- b. "Granholm says the scandal is bad for the image of Detroit and Michigan." Ex. 1.

- c. "I hope this is unprecedented and remains unprecedented because we certainly don't want to see a repeat of this in any way, shape or form,' she said." Ex. 3.

18. As a result of Defendant's reported unfair bias and partiality regarding Kilpatrick's removal from office, the hearing will not provide Kilpatrick with the fair and just treatment he is entitled to under the Michigan Constitution.

### **CAUSES OF ACTION**

#### **Count I**

#### **Declaratory Judgment:**

#### **Violation of the Right to Fair and Just Treatment** **Art. 1, § 17 of the Michigan Constitution of 1963**

19. Kilpatrick incorporates herein by reference each of the preceding paragraphs 1 through 18 as though fully set forth herein.

20. The Michigan Constitution of 1963 provides: "The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed." Art. 1, § 17.

21. Defendant's removal hearing is a quasi-judicial proceeding. Accordingly, notions of fairness dictate that Kilpatrick is entitled to an unbiased and impartial decision maker.

22. Defendant's prior public and private statements expose that she has prejudged the allegations against Kilpatrick and has an actual bias resulting in a predisposition to remove him from office.

23. Kilpatrick will be deprived of his right to fair and just treatment in the removal hearing with Defendant as the finder of fact.



**Count II**  
**Declaratory Judgment:**  
**MCL 168.327 is Void for Vagueness in**  
**Violation of the Right to Fair and Just Treatment**  
**Art. 1, § 17 of the Michigan Constitution of 1963**

24. Kilpatrick incorporates herein by reference paragraphs 1 through 23 as though fully set forth herein.

25. Contrary to Kilpatrick's right to fair and just treatment in any executive proceeding, Section 327 of the Michigan Election Law allows Defendant to remove Kilpatrick for "official misconduct" when she is "satisfied from sufficient evidence," that such misconduct has occurred.

26. The term "official misconduct," which is not defined in Section 327 or anywhere else in Michigan law, does not provide fair notice of the conduct proscribed, and it is therefore void for vagueness in violation of the Michigan Constitution of 1963.

27. The term "official misconduct" as used in Section 327 is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether the statute has been violated, and is therefore void for vagueness in violation of the Michigan Constitution of 1963.

28. Persons of common intelligence would not be able to determine what conduct would be deemed "official misconduct" under the statute and subject an elected official to removal. Section 327 is therefore void for vagueness.

29. Section 327 allows removal of an elected official based on the amorphous and undefined "sufficient evidence" level of proof, which also gives Defendant unfettered discretion. As a result, Section 327 is void for vagueness.

30. In a phone conference with the Governor's administrative aid, the rules and procedures for the hearing were dictated to Kilpatrick's counsel. Upon information and belief, it is to be followed by a written order signed by the Governor. The procedures dictated by the Governor's staff do not guarantee Kilpatrick's right to confront the witnesses against him and allow for the admission and consideration of rank hearsay without the ability to cross-examine those witnesses. Under the current procedure as described by the Governor's staff, counsel for the City Council will produce few witnesses in support of its petition to remove Kilpatrick. Instead, he will be relying upon transcripts of proceedings wherein there was no cross examination or ability to confront the witness. In addition, the Governor has yet to rule upon issues of privilege that are at issue with respect to those documents, thereby violating rights that are guaranteed by the Constitution of the United States and the Constitution of the State of Michigan.

31. Kilpatrick will be denied his right to fair and just treatment if the removal hearing proceeds pursuant to Section 327 and the procedures and evidentiary rules that have been provided herein.

**WHEREFORE**, Plaintiff Kilpatrick prays for the following relief:

- (i) entry of an order declaring that Defendant's bias deprives Kilpatrick of the right to fair and just treatment;
- (ii) entry of an order declaring that MCL 168.327 is void for vagueness, therefore depriving Kilpatrick of his right to fair and just treatment;
- (iii) entry of an order enjoining Defendant from conducting a hearing regarding removal of Kilpatrick from office;

- (iv) award of reasonable attorneys' fees and the costs of prosecuting this action; and
- (v) such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

---

*Attorneys for Plaintiff*

James C. Thomas, PC (P23801)

Joseph Niskar (P23801)

Michael Naughton (P70856)

Attorney at Law

535 Griswold St., Suite 263

Detroit, MI 48226

WINSTON & STRAWN

DAN K. WEBB

35 W. Wacker Dr. #4200

Chicago, IL 60601

(312) 558-5600

# WZZM 13 News - Print Editon

## Granholt doesn't know if Detroit mayor can survive scandal



Mayor Kwame Kilpatrick  
DFP

Web Editor: Lanetta Williams  
» 6 months ago

DETROIT - Governor Granholm says she doesn't know if Detroit Mayor Kwame Kilpatrick can survive a scandal involving sexually explicit text messages between the mayor and his top aide. Granholm says the scandal is bad for the image of Detroit and Michigan. She says she hopes the situation can be resolved quickly. Granholm says it's important to turn the page and move forward because Detroit now has a lot of positive momentum. The state Court of Appeals has ordered the release of documents related to the city's settlement of a whistle-blowers' trial. Kilpatrick says the city hasn't decided whether to appeal the order by today's deadline.

AP



# The Macomb Daily

## Granholt says she'll stay put

### Governor cools rumors of role in Clinton White House

By Chad Selwski  
Macomb Daily Staff Writer

Fresh off of her sixth State of the State address, Gov. Jennifer Granholm on Thursday put an end to speculation that she may be leaving for a high-ranking position in the nation's capital if Hillary Clinton wins the White House.

"I've never left a job before it was done. We're not done yet. We've got stuff we've got to get done and I want to complete the job," Granholm said in an interview with Macomb Daily reporters and editors.

A Clinton supporter, Granholm said her focus is on her final three years in Lansing, not a job in Washington. The governor said guessing about her political future, including a potential Cabinet post, has become a "favorite parlor game in Lansing." Some political observers had suggested that Granholm's Tuesday speech would be her last State of the State address.

Asked if she was pledging to complete her term of office, Granholm quickly responded: "I'm not interested in leaving. I've got family here. My kids are in school here. I'm going to stay here," she said.

The governor would not offer any of her own speculation about one of her political allies, Detroit Mayor Kwame Kilpatrick, who is mired in scandal due to an affair with his former chief of staff.

Granholm said she hopes Wayne County Prosecutor Kym Worthy will quickly complete her investigation to determine whether the mayor may have committed perjury by denying the affair at a 2007 civil trial that cost the city \$9 million.

The governor said she has not talked to Kilpatrick since the story broke, but she's worried about the impact the nonstop publicity will have on Detroit's economic progress.

"It certainly doesn't help," she said. "This crisis has to be put behind us quickly, the faster the better - whatever that means. We have a ton of joint projects we are working on together and we've got to keep the momentum



going. We don't want this scandal to be slowing down that progress."

The governor spoke after visiting the Electrical Industry Training Center in Warren. The facility, run by the International Brotherhood of Electrical Workers, teaches the skills needed for building wind turbines and solar panels.

Granholtz is traveling the state touting her new economic development initiatives.

One proposal outlined on Tuesday would offer generous tax incentives to those businesses that are among the 50 fastest-growing sectors in the national economy.

Michigan companies in that category would see their tax credit for creating new jobs triple. Out-of-state firms that move here would pay no business taxes in their first year in Michigan. The second year, they would get a 75 percent break on their tax bill. The credits would gradually phase out over a 4-year period.

The governor said the plan acknowledges that all states are in a bidding war to land new jobs.

"Every state is in the game," she said, "and you better believe we need to be in the game too."

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# The Macomb Daily

## Governor dodges mayor scandal

### Granholm visits Macomb, hammering need for work force diversity

By Chad Selweski  
Macomb Daily Staff Writer

Gov. Jennifer Granholm on Thursday dodged questions about whether Detroit Mayor Kwame Kilpatrick should resign, but the governor said she hopes the city can quickly "turn the page" by concluding the ongoing investigations of the text messaging scandal.

Granholm acknowledged that Kilpatrick's secret settlement of whistle-blower lawsuits had generated negative national media reports about Detroit and had also cast a shadow over Michigan.

"None of this is good, for the city, for the state. Whatever happens has to happen quickly so that we can turn the page and go to work," she said. "There ... is no way you can spin any of this to be positive."

Kilpatrick has brushed aside calls for his resignation after court documents released Wednesday showed that he agreed to an \$8.4 million settlement in an attempt to keep incriminating text messages under wraps. Transcripts of those messages showed that the mayor had a sexual relationship with his former chief of staff, Christine Beatty.

"We have to let the legal system take its course. And I don't think I can add anything more to that," Granholm said when asked if Kilpatrick should quit if he's charged with perjury or other crimes.

The Detroit City Council is investigating the mayor's attempt to cover up the settlement and the role the city's Law Department played. At the same time, the Wayne County Prosecutor's Office is investigating whether Kilpatrick committed perjury when he denied the affair with Beatty during testimony in the whistle-blower trial. Prosecutor Kym Worthy has said the inquiry will end by mid-March.

Granholm was swarmed by reporters Thursday as she completed an event in Clinton Township. The governor said she hoped that any legal precedents established in the Detroit case would be overshadowed by basic lessons learned about the need for openness in government.



"I hope this is unprecedented and remains unprecedented because we certainly don't want to see a repeat of this in any way, shape or form," she said.

Granholm's remarks came after hosting a roundtable discussion about the Michigan economy with about three dozen people at the Macomb County Public Works Commissioner's Office.

The participants ranged from local business owners and unemployed workers to a social worker and a hospital administrator. The topics they raised included home foreclosures, job training, manufacturing losses, water pollution, health care, food assistance programs and full-day kindergarten.

Granholm was particularly focused on her recurring message about diversifying the Michigan economy by attracting companies associated with renewable energy sources, such as wind power.

Dale Camphous, owner of a Harrison Township tool and die shop, said if his business is to survive it quickly needs new tax incentives - a "shot in the arm."

Granholm said the wind turbine industry may provide the solution for Camphous' company and many other struggling tool and die shops. GE has a 3-year waiting list of contracts to build turbines, she said, and it will bring some of that business to Michigan if the Legislature adopts a renewable fuels standard.

Granholm favors legislation languishing in the Capitol that would mandate that 10 percent of the state's electricity must be generated by wind, solar or other eco-friendly power sources by 2015.

"When you hear those words, global warming or climate change, you should be thinking jobs," she said. "The minute (a state standard) is in place, those investments will take place here in Michigan."

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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

HON. KWAME M. KILPATRICK,

Plaintiff,

Case No.

vs.

HON. JENNIFER M. GRANHOLM  
in her official capacity as  
Governor of the State of Michigan,

Defendant.

\_\_\_\_\_ /

AFFIDAVIT OF JAMES C. THOMAS

STATE OF MICHIGAN)  
  )SS  
COUNTY OF WAYNE )

1. That I am and have been counsel for Mayor Kwame M. Kilpatrick, along with Sharon McPhail, in matters pending before the Governor that are the subject of this litigation.
2. That the allegations which are contained within the body of the complaint are factual and correct except to the extent that they are reflected upon information and belief, and as to those allegations, it is believed that they are true as well.
3. That the contents of Paragraphs of 15 and 16 of the Complaint reflect the events as they occurred.
4. It is submitted that those paragraphs reflect a sufficient basis upon which a reasonable person could believe that there is in fact a pre-disposition that the Mayor should be removed from office before hearing the evidence.

5. Furthermore, the procedures which have been dictated by the Governor's office for the hearing, scheduled on September 3, 2008 do not allow for meaningful cross-examination, the ability to compel witnesses who are not otherwise pre-disposed to appear and the generally recognized safeguard for the introduction of evidence. As a result, the Mayor is deprived of his right to fair and just treatment as required by art. I, § 17 of the Michigan Constitution of 1963.

Further, deponent saith not.

---

James C. Thomas

Subscribed and sworn to before me  
this 28<sup>th</sup> day of August, 2008

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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

HON. KWAME M. KILPATRICK,

Plaintiff,

Case No.

vs.

HON. JENNIFER M. GRANHOLM  
in her official capacity as  
Governor of the State of Michigan,

Defendant.

---

PROOF OF SERVICE

Felicia Murphy says that on the 28<sup>th</sup> day of August, 2008, she served a copy of  
Summons, Complaint, Emergency Motion for Temporary Restraining Order and Preliminary  
Injunction, Brief in Support upon:

William H. Goodman, 1394 E. Jefferson, Detroit, MI 48207

Kelly G. Keenan, Legal Counsel to the Governor, 111 S. Capitol Avenue, Lansing, MI 48909  
by hand delivery.

I declare that the statements above are true to the best of my knowledge, information  
and belief.

---

Felicia Murphy

STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT  
WAYNE COUNTY

REQUEST FOR HEARING ON A MOTION  
(PRAECIPE)  
ORDER / JUDGMENT

08-122051 CZ 8/28/2008  
JDG:ROBERT L ZIOLKOWSKI  
KILPATRICK KWAME M HON  
VS  
GRANHOLM JENNIFER M HON

2 Woodward Avenue, Detroit, Michigan

Plaintiff name(s) Honorable Kwame K. Kilpatrick
Plaintiff attorney, bar no., address, and telephone no. James C. Thomas (p23801) 2632 Buhl Building Detroit, MI 48226 (313) 961-4382

Defendant name(s) Hon. Jennifer M. Granholm
Defendant's attorney, bar no., address, and telephone no. Kelly G. Keenan (p36129) 111 South Capitol Ave Lansing, MI 48909 (517) 335-6847

v

List additional attorneys on other side

1. Motion Title: Motion for Temporary Restraining Order and Preliminary Injunction

2. Moving Party: Plaintiff Telephone No. (313) 963-2420

3. Please place on the motion calendar for:

Judge Ziolkowski	Bar No	Date August 29, 2008	Time 10:00 a.m.
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Adj. to: \_\_\_\_\_ Adj. to: \_\_\_\_\_ Adj. to: \_\_\_\_\_

4. I certify that I have made personal contact with Kelly G. Keenan  
on August 28, 2008 regarding concurrence in relief sought in this motion and that concurrence has been  
denied or that I have made reasonable and diligent attempts to contact counsel regarding concurrence with  
motion.

Date 8/28/08 Attorney [Signature] Bar No. P- 23801

ORDER / JUDGMENT

DATED: 8/28/08

IT IS ORDERED THAT THIS MOTION IS:

☐ DENIED ☐ GRANTED IN PART / DENIED IN PART ☐ TAKEN UNDER ADVISEMENT ☐ DISMISSED

☐ GRANTED AND IT IS FURTHER ORDERED AND ADJUDGED: \_\_\_\_\_

CIRCUIT JUDGE

Approved as to form and substance by Counsel for:

Plaintiff \_\_\_\_\_

Defendant \_\_\_\_\_

Date \_\_\_\_\_

FILE EITHER IN PERSON OR BY MAIL WITH:  
CATHY MARIE GARRETT  
WAYNE COUNTY CLERK  
201 CITY-COUNTY BUILDING  
DETROIT, MI 48226

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

HON. KWAME M. KILPATRICK,

Plaintiff,

Case No.

vs.

HON. JENNIFER M. GRANHOLM  
in her official capacity as  
Governor of the State of Michigan,

Defendant.

---

NOTICE OF HEARING

PLEASE TAKE NOTICE that the attached Emergency Motion for Temporary Restraining Order and Preliminary Injunction and supporting documents will be brought on for hearing on August 29, 2008 at 10:00 a.m., before the Honorable Robert L. Ziolkowski, or as soon thereafter as counsel may be heard.

Respectfully submitted,

WINSTON & STRAWN LLP



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Dan K. Webb

Attorney for Defendant, Kilpatrick  
35 West Wacker Drive  
Chicago, IL 60601  
312-558-5600



PLUNKETT COONEY

---

James C. Thomas P23801

Co-Counsel for Defendant, Kilpatrick

2632 Buhl Building

535 Griswold Street

Detroit, MI 48226

313-963-2420

DATED: August 28, 2008

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

HON. KWAME M. KILPATRICK,

Plaintiff,

v.

Case No. \_\_\_\_\_

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in her official capacity as Governor of the State of Michigan,

Defendant.

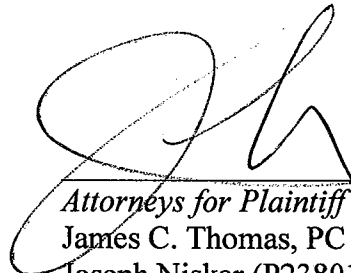
**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

Plaintiff Hon. Kwame M. Kilpatrick ("Kilpatrick"), pursuant to MCR 3.310(a) and (b), respectfully requests that this Court grant his Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. Kilpatrick seeks injunctive relief to halt Defendant Hon. Jennifer M. Granholm's scheduled hearing regarding the removal of Kilpatrick from the office of Mayor of the City of Detroit. If the removal hearing were to proceed, Defendant's actions would violate Kilpatrick's rights under Article 1, Section 17 of the Michigan Constitution of 1963 to fair and just treatment.

Kilpatrick is entitled to a temporary restraining order because he will suffer irreparable harm if Defendant's actions are not enjoined, because he has no adequate remedy at law, and because he is likely to succeed on the merits of his case. Further, the balance of equities strongly supports the issuance of an injunction in this case, where not only Kilpatrick's rights, but also the people of the City of Detroit's right to choose its governing officials is at issue. In support of his Motion, Kilpatrick submits his Memorandum in Support of an Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

Wherefore, for the reasons set forth above, as well as in its Memorandum of Law, Kilpatrick respectfully requests this Court to grant his Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,



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**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

HON. KWAME M. KILPATRICK,

Plaintiff,

v.

Case No. \_\_\_\_\_

HON. JENNIFER M. GRANHOLM,  
in her official capacity as Governor of the State of Michigan,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S  
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

**INTRODUCTION**

Absent intervention from this Court, in less than a week, Plaintiff Hon. Kwame M. Kilpatrick ("Kilpatrick") will face removal from his elected office as Mayor of the City of Detroit by virtue of a procedurally unfair hearing held pursuant to an impermissibly vague statute before a biased fact finder who is predisposed to rule against him. Article 17 of the Michigan Constitution of 1963 guarantees him more. It guarantees Kilpatrick and all citizens of Michigan "fair and just treatment" during the course of an executive hearing.

The removal hearing scheduled to begin on September 3, 2008 before Defendant Hon. Jennifer M. Granholm, pursuant to Section 327 of the Michigan Election Law violates Kilpatrick's right in several ways. First, Governor Granholm is not an unbiased fact finder, and any notion of fairness would require impartiality on the part of the trier of fact. Additionally, the procedures outlined by Granholm for the hearing itself do not provide Kilpatrick with an opportunity to confront his accusers or cross-examine witnesses, both of which are essential to a fair and just proceeding. Finally, the statute pursuant to which the Governor is proceeding is

impermissibly vague, giving Kilpatrick little notice of what conduct might subject to him to removal and gives the Governor unfettered discretion to decide on removal based on an amorphous and vague evidentiary standard. Allowing the Governor to proceed would be in blatant violation of Kilpatrick's rights, and moreover undermines the public's interest in its elected officials serving in their office. The harm that will flow from these unfair proceedings is imminent, will be irreparable, and although Kilpatrick disagrees with this conclusion, the Governor has argued that Kilpatrick has no right to the review of her decision, thus depriving him of any remedy at law.

## **ARGUMENT**

### **A. Legal Standard**

Michigan Courts consider four factors when determining whether to issue a preliminary injunction. First, harm to the public interest if the injunction issues. Second, whether the harm to the movant if the injunction is not granted outweighs the harm to the opposing party if it is granted. Third, the likelihood that the movant will succeed on the merits of his underlying claim. Fourth, whether the movant will suffer irreparable injury if the injunction is not granted. *Thermatool Corp. v. Borzym*, 227 Mich. App. 366, 376 (1998). Here, the balance of these factors weighs clearly in favor of enjoining Governor Granholm from proceeding with the removal hearing.

### **B. Kilpatrick Is Entitled To A Preliminary Injunction At This Time To Halt Defendant From Depriving Kilpatrick Of His Right To Fair And Just Treatment**

#### **1. Kilpatrick Is Likely To Succeed On The Merits Of His Claim That Defendant's Bias Will Violate Kilpatrick's Right To Fair And Just Treatment**

Article 1, Section 17 of the Michigan Constitution of 1963 provides: “The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.” Art. 1, § 17. This provision recognizes that hearings, such as the removal hearing scheduled by Defendant, have a quasi-judicial character. *Buback v. Governor*, 380 Mich. 209, 218 (1968). Unlike the protections of due process, the fair and just treatment clause does not require a plaintiff to show that his life, liberty or property interests are at stake before being afforded relief from unfair or unjust treatment in a hearing. *Jo-Dan, Ltd. v. Detroit Bd. of Education*, No. 201406, 2000 Mich. App. LEXIS 1403, at \*\*30-31 (2000). Instead, the goal of the fair and just treatment clause is to protect individual rights in hearings and investigations because due process may not. *Id.* at \*36. The inquiry is fact sensitive, and the full panoply of remedies are available for violations of the fair and just treatment clause. *Id.* at \*42.

Basic interests of fairness and justice dictate that Kilpatrick should be afforded a hearing before an unbiased and impartial decision maker. *Rose v. Houghton Lake Ambulance Serv.*, No. 242327, 2004 Mich. App. LEXIS 719, at \*2 (2004). Kilpatrick need not make a showing of actual bias. *Id.* at \*\*2-3. Evidence of bias includes where the decision maker “(1) has a pecuniary interest in the outcome, (2) was the target of personal abuse or criticism from the party before him, (3) was involved in other matters related to the party, or (4) might have prejudged the case because of prior participation in the matter.” *Id.* at \*3. In these instances, the probability of actual bias on the part of the decision maker is too high to be tolerable. *Id.*

Defendant has made numerous public statements to the press and private statements to Kilpatrick’s attorneys that reveal that the probability that Defendant has an actual bias in favor of removing Kilpatrick from office is too high to be tolerable. (Compl. at ¶¶ 15-

17.) Defendant's statements indicate that regardless of the evidence presented at the removal hearing, Defendant has already prejudged Kilpatrick and determined that Kilpatrick should be removed from the office of the Mayor of the City of Detroit. Therefore, she lacks the impartiality that Kilpatrick is entitled to.

The very heart of fairness in adjudicative proceedings requires that a neutral and disinterested decision maker. See *Williams v. Hofley Manufacturing Co.*, 430 Mich. 603, 617-18 (1988). The Governor has shown that she is incapable of judging the evidence presented at the removal hearing fairly. Accordingly, the hearing should therefore be enjoined.

**2. Kilpatrick Is Likely To Succeed On The Merits Of His Claim That Proceedings Pursuant to the Impermissibly Vague Removal Statute Will Violate Kilpatrick's Right To Fair And Just Treatment**

A statute is void for vagueness if it does not provide fair notice of the conduct proscribed or it is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether it has been violated. *Dep't of State Compliance & Rules Division v. Michigan Education Association-NEA*, 251 Mich. App 110, 116; 650 NW2d 120 (2002). In this case, the removal statute violates both of these principles, and any proceeding pursuant to it cannot be called fair or just.

Fair and just treatment as is guaranteed under the Michigan Constitution must require that the fact finder be bound by some discernable standard, yet MCL 168.327 calls for removal for undefined "official misconduct" when the Governor is "satisfied" that a finding of such misconduct is supported by "sufficient evidence." "Official misconduct" is not defined in the statute or anywhere else in Michigan law. The statute therefore provides no standard by which Kilpatrick's conduct should be judged, and provides absolutely no rules for the Governor to exercise her authority. See *Giacco v. State of Pennsylvania*, 382 U.S. 399 (1966) (holding that

“misconduct” is an impermissibly vague term for which to impose punishment). Moreover, the standard of proof that the Governor is required to find has been met is so vague that it is essentially no standard at all. The removal statute is the very definition of “vague” and as such, any proceeding pursuant to it deprives Kilpatrick of his rights to a fair proceeding.

**3. Kilpatrick faces imminent and irreparable harm that outweighs any harm to the Governor if the injunction is issued.**

The imminent and irreparable nature of the harm that Kilpatrick faces if the Governor’s hearing is not enjoined is obvious. He faces removal from office pursuant to a procedurally unfair and deficient process before a biased fact finder. Not only will Kilpatrick lose his job as a result of removal, but his reputation will be irreparably damaged. This is exacerbated by the fact that all of this is scheduled to proceed prior to his opportunity to defend himself in the parallel criminal proceedings. His rights to fair and just treatment under the Michigan Constitution in the Governor’s proceedings stand to be violated as well as his rights to a fair trial and all related rights in the criminal proceeding. Notably, the procedures put in place by the Governor put at risk Kilpatrick’s Fifth Amendment right against self incrimination. In spite of this, the Governor has refused to stay her proceedings pending the outcome of the criminal proceedings.

**4. The public interest favors the entry of an injunction.**

In removing an elected official, the Governor substitutes her own judgment for that of the citizens who elected him. The people of the City of Detroit have the right and expectation that their elected Mayor will serve out his term. Any abrogation of that right, through the exercise of the Governor’s removal power must be undertaken with a sense of fairness and justice, or the rights of the public are not protected. *Metevier v. Therrien*, 80 Mich. 187, 45 N. W. 78 (Mich.

1890). In the present case, this important public interest can only be vindicated if the Governor is enjoined from proceeding with the plainly unfair removal proceeding.

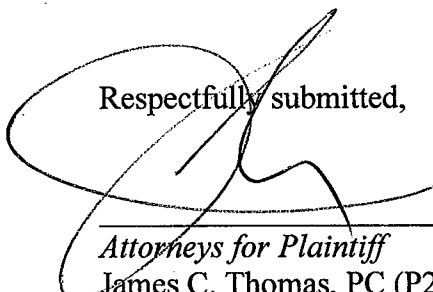
**5. Kilpatrick May Have No Remedy At Law.**

Whether Kilpatrick has an adequate remedy at law to challenge Defendant's removal decision after the fact is undecided. While some courts suggest that a court may review a removal decision for fair and just treatment (see *Buback*, 380 Mich. at 217-218), the Governor has herself maintained that Kilpatrick has no right to appeal or judicial review. Accordingly, Kilpatrick may not have any remedy at law whatsoever to redress the harm he will suffer as a result of the biased decision making the Governor will make at the removal hearing.

**CONCLUSION**

For all of the foregoing reasons, Plaintiff respectfully requests this Court to grant his Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,



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